IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JAIPUR BENCH

S.B. CRIMINAL MISC. PETITION NO.714/01

Sumer Singh Meena **Versus** Rajulal & Ors.

DATE OF ORDER :: 19/09/2007

HON'BLE MR. JUSTICE AJAY RASTOGI

Mr. V.S. Chauhan, for petitioner
Mr. Arun Sharma, Public Prosecutor for State
None present for respondents

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Instant petition has been filed by petitioner assailing the order dated 5th September, 2000 whereby the Court of Revision while accepting the petition preferred by accused-respondents set aside the order taking cognizance against them on the premise that it was barred by limitation in view of Section 468 of Code.

Facts, which are relevant for consideration in the instant petition, are that for the incident which took place on 11th October, 1994, a complaint was filed before the competent court of jurisdiction on 20th October, 1994. Thereafter, the matter was sent for inquiry and finally learned trial Judge took cognizance against accused-non-petitioners vide order dated 6th November, 1998 u/ss.323, 324 & 341 IPC. The accused-non-petitioners filed revision petition

which was allowed only on the premise that since learned trial Judge took cognizance after expiry of more than three years, as such it is barred by limitation in terms of Section 468 Cr.P.C. and on this count alone order taking cognizance was set aside.

Counsel for petitioner submits that so far as limitation is concerned, it is to be examined on the date of filing of complaint and not on the date learned trial Judge took cognizance of offence and in support of his submission, counsel has placed reliance on the judgment of the Apex Court in **Japani Sahoo Vs. Chandra Sekhar Mohanty [2007 SCW-4998]**. With the assistance of judgment referred to supra, counsel submits that the view expressed by learned trial Judge while examining the scope of Section 468 Cr.P.C. is erroneous and the order impugned deserves to be set aside.

Learned Public Prosecutor has also supported the submission made by counsel for petitioner and submits that for the purpose of limitation, the date of filing of complaint is material and not the date on which learned trial Judge took cognizance.

No one has appeared on behalf of accused-non-petitioners No.1 & 2 despite service.

The Apex Court while examining scope of Section 468 Cr.P.C. in **Japani Sahoo Vs. Chandra Sekhar Mohanty** (supra), has observed as under:

> "In view of the above, we hold that for the purpose of computing the period of limitation, the relevant date must be considered as the date of filing of complaint or initiating criminal proceedings and not the date of taking cognizance by a Magistrate or issuance of process by a Court. We, therefore, overrule all decisions in which it has been held that the crucial date for computing the period of limitation is taking of cognizance by the Magistrate/Court and not of filing of complaint or initiation of criminal proceedings".

In the instant case, the incident was of 11th October, 1994 and undisputedly the complaint was filed on 20th October, 1994 itself. The finding, which has been recorded by learned trial Judge holding that it is barred by limitation on the premise that cognizance was taken by learned trial Judge on 6th November, 1998, does not hold good and the order deserves to be set aside.

Consequently, the misc. petition stands allowed. The order of Court of Revision dated 5th September, 2000 is hereby quashed and set aside. Record be sent back to trial court, who may proceed further with the matter in accordance with law.

[AJAY RASTOGI],J.